D.B.CIVIL SPECIAL APPEAL NO. 142/2007
Anil Kumar Agarwal v. State of Rajasthan & ors.

Date of order : 08.03.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Alok Sharma, for the appellant

This special appeal is directed against the order of the learned Single Judge dated 8.1.2007 dismissing the writ petition of the appellant. The appellant had filed the writ petition for quashing the memorandum of charges dated 30.11.2006 with respect to a departmental proceeding .

The learned Single Judge observed that from bare reading of the charges it can not be said that no case of misconduct prima facie is made out. Having regard to the plea of the appellant that the action had been taken mala fide, the learned Judge found that the appellant had not impleaded the person against whom he had made the allegation.

Shri Alok Sharma counsel for the appellant submitted that the appellant had challenged the inquiry on the ground of malice in law and not malice in fact, and the writ petition therefore could

not be dismissed on the ground of non-impleadment of the person against whom mala fide has been alleged. The learned Single Judge committed error in dismissing the writ petition on that ground. We do not think that dismissal of the writ petition was on account of non impleadment, the burden of the order is that the charge-sheet prima facie discloses misconduct on the part of the appellant and the same therefore cannot be quashed.

Counsel for the appellant went into factual aspects of the case. He made endeavour to explain the charges contending that no case of misconduct was made out and the proceeding had been initiated mala fide by misusing the powers. It was stated that the appellant was sought to be transferred from Bharatpur against which he moved the Rajasthan Civil Services Appellate Tribunal and the Tribunal was pleased to stay the transfer order. The appellant was then placed under suspension. The suspension was stayed by this Court and the application for vacation of stay under Article 226(3) of the Constitution of India was also rejected. At this stage the respondents misusing their powers proposed to initiate departmental proceeding. The proposal to initiate the departmental proceeding however was disapproved by the Department of Personnel but in disregard of the opinion the proceeding was initiated.

Rules 16 and 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 confer power upon the competent authority to impose penalties as may be considered appropriate in departmental inquiry to be held in the manner laid down therein. The power of the Government to initiate departmental inquiry cannot be questioned by any government servant.

The only question for consideration is whether the proceeding was arbitrarily or mala fide initiated so as to warrant interference by this Court under Article 226 of the Constitution. We do not wish to make comments on merit of the charge. That is to be seen by the disciplinary authority at the first instance. Indeed, even after inquiry is over, the High Court can not consider the correctness or otherwise of the findings while exercising power of judicial review under Article 226. It can only examine the correctness or otherwise of the inquiry proceedings.

Nevertheless, in fairness to the appellant, we would refer to the substance of the charges in order to consider whether charges levelled against the appellant do justify initiation of departmental proceeding or not. The charges as mentioned in the memorandum are fourfold. Firstly, it is said that while posted as Drug Control Officer at Bharatpur the appellant without information to the

higher authorities or obtaining permission informed the press about the seizure proceedings, and thereby violated rules 10 and 13 of the Conduct Rules of 1971. Secondly, it is said that during his tenure at Bharatpur, he was relieved from the duties on 1.3.2005 with a direction to submit joining in the secretariat; but the appellant refused to receive the order. In the circumstances, the order was pasted on his residence. The appellant however did not report for duty in the secretariat and remained unauthorisedly absence from 1.4.2005 to 14.4.2005 which amounted to disobedience of the orders and direction of the higher authorities and reflective of indiscipline. Thirdly, it is alleged that the appellant unauthorisedly kept with himself the correspondence, record etc. connected with the search conducted at Kamla Nehru Road, Kumher Gate, Bharatpur on 17.3.2005 at his residence upto 20.4.2005. Lastly, it is alleged that while the appellant was 'awaiting posting order' he filed application for cancellation of bail in respect of Rakesh even though he was not posted at Bharatpur, which he later withdrew in collusion with the party to cause him undue benefit.

As observed at the outset, we do not wish to comment on the merit of the charge, for, expression of opinion on merit of the charge would cause prejudice to one or the other party when the

proceeding is pending before the Enquiry Authority. Submissions of the counsel were in the nature of defence of the appellant but it goes without saying that this Court cannot hold parallel proceeding and consider the defence of the appellant, which is to be considered by the disciplinary authority. We do not think upon prima facie consideration of the facts stated in the memo of charges, as briefly indicated above, that no case of misconduct is made out and therefore initiation of disciplinary proceeding is bad in law to warrant interference by this Court. We thus do not find error in the order of the learned Single Judge dismissing the writ petition.

The appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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